

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150

Closed Session Location - Room 141

FULL BOARD MEETING MINUTES**

FEBRUARY 3, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Sean Harrigan, Member
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Sherry Hicks has been appointed Director of Legislation for the State Personnel Board.
- B. State Personnel Board Executive staff conducted an all staff meeting to provide information to our employees on the Governor's proposed budget of 2003-2004 for the State Personnel Board. Staff was also provided information on procedures and timetables for reductions and the efforts of the Board to seek modification of the proposed reductions.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

- C. State Personnel Board staff has completed a Spring Finance Letter and submitted it to the State and Consumer Services Agency and Department of Finance.
- D. State Personnel Board staff has completed the Decentralized Testing Report.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Litigation:

- A. Westly v. California Public Employees' Retirement System (PERS) - The Court of Appeal, Third Appellate District, has issued its decision in this case in which the State Controller challenged PERS's creation of exempt positions for portfolio managers and PERS's paying those managers salaries that had not been approved by the Department of Personnel Administration. The Court found that the PERS Board does not have plenary authority to exempt its employees from civil service and bypass the controller's authority to issue warrants. The Court found that "the 'plenary authority' that is granted over the 'administration of the system' goes to the management of the assets and their delivery to members and beneficiaries of the system, not the remuneration of those who administer it."

4. REPORT ON LEGISLATION - Walter Vaughn, Executive Officer

The Board was advised of the following:

- A. Legislation sponsored by the State Personnel Board has been forwarded to the Legislative Counsel and staff is obtaining authors.

The Board voted on the following:

- A. SCA 1 (Burton) - Would amend the California Constitution to provide further public rights to attend, observe, and be heard in meetings of elected and appointed bodies and to inspect and copy records.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

5. HEARING - EXTENSION OF PROBATIONARY PERIODS

State Personnel Board (SPB) staff is proposing to amend Rule 321, Extension of Probationary Periods, to comply with *In re Dorri*, SPB Precedential Decision No. 02-05, May 7, 2002, and to interpret Government Code (GC) § 19170 as amended by Stats. 2002 c. 236 (Assembly Bill [AB] 1950).

Persons Participating:

Steve Unger, Staff, California State Personnel Board

ACTION: Adopted on February 3, 2003

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

6. HEARING - EXPEDITED HEARINGS

State Personnel Board staff is proposing to amend Rule 52.4, Expedited Hearings, to eliminate the requirement that the non-moving party stipulate to an expedited hearing.

Persons Participating:

Elise Rose, Chief Counsel, California State Personnel Board
Nancy Yamada, Attorney at Law, California State Employees Association

ACTION: Adopted on February 3, 2003

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

7. HEARING - ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD

State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief.

Persons Participating:

Elise Rose, Chief Counsel, California State Personnel Board
Nancy Yamada, Attorney at Law, California State Employees Association
Catherine Kennedy, Attorney at Law, Association of California State Supervisors
John Markey, Labor Representative/Legal, California Association of Highway Patrolmen
Melinda Leigh Williams, Attorney at Law, (private practice)

ACTION: Submitted

8. ORAL ARGUMENT

Oral argument in the matter of TONY PORCELLA, CASE NO. 01-2898. Appeal from dismissal. California Highway Patrol.

Persons Participating:

Robert Andrew Harkness, Deputy Attorney General, California Highway Patrol
Anthony M. Santana, Legal Counsel, California Association of Highway Patrolmen

ACTION: Submitted

9. ORAL ARGUMENT

Oral argument in the matter of WALTER JOHNSON, CASE NO. 02-0543. Appeal from dismissal. Department of Developmental Services.

Persons Participating:

Barbara Farley, Labor Relations Specialist, Department of Developmental Services
Ken Murch, Consultant, California Association of Psychiatric Technicians

ACTION: Submitted

BOARD ACTIONS

10. STATE PERSONNEL BOARD SUMMARY MINUTES OF JANUARY 22, 2003.

ACTION: Adopted on February 3, 2003.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

11. ACTION ON SUBMITTED ITEMS

ACTION: See pages 12-14.

12. ADMINISTRATIVE LAW JUDGE CASES

On February 3, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

CHIEF COUNSEL RESOLUTION

SUVIMOL NAKARANGKUL, CASE NO. 02-0277E

Appeal from reasonable accommodation

Registered Nurse

Norco State Prison

Department of Correction

ACTION: Adopted Chief Counsel's resolution remanding matter to Administrative Law Judge to conduct an evidentiary hearing and prepare a proposed decision

PROPOSED DECISIONS

RAUL CABAN, CASE NO. 02-1915

Appeal from five percent reduction

in salary for three months

Caltrans Equipment Operator II

Department of Transportation

ACTION: Five percent reduction in salary for three months sustained

PHILLIP R. CANADAY, Jr., CASE NO. 01-3653

Appeal from dismissal

State Traffic Officer

Department of California Highway Patrol

ACTION: Dismissal sustained

CLARA D. FIGGINS AKA DORIS FIGGINS, CASE NO. 02-0356E

Appeal of sexual harassment

Racing License Technician

California Horse Racing Board

ACTION: Appeal of sexual harassment dismissed

LEONARD PLEASANT, CASE NO. 02-3055

Appeal from rejection during

probationary period

Correctional Officer

Soledad - State Prison

Department of Corrections

ACTION: Rejection during probationary period sustained

THOMAS SANBORN, CASE NO. 02-2582

Appeal from demotion from the position

of Correctional Sergeant to

Correctional Officer

Ione - State Prison

Department of Corrections

ACTION: Demotion modified to a temporary demotion for six months

LAWRENCE SCHAEFER, CASE NO. 02-0079

Appeal from 60 calendar days suspension

and reassignment from the position of

Correctional Officer with the Transportation

Unit, Department of Corrections at Sacramento

to the position of Correctional Officer

Chino - State Prison

Department of Corrections

ACTION: Administrative Law Judge's proposed decision rejected by Board. Board to decide case itself

JULIE BALANGUE, CASE NO. 02-2656

Appeal from five working-day suspension and

a one-step reduction in salary for six months

Office Technician (Typing)

Board of Accountancy

Department of Consumer Affairs

ACTION: Five working day suspension and a one-step reduction in salary for six months modified to a two working day suspension and a one-step reduction in salary for six months

JULIE D. SOO, CASE NO. 02-2682

Appeal from suspension for ten workdays

Staff Counsel

Department of Insurance

ACTION: Suspension for ten workdays modified to an official reprimand

13. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1 EXTENSION.

ACTION: See pages 15-18.

14. WITHHOLD APPEALS

On February 3, 2003, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

VICTOR ALANIS, SR., CASE NO. 02-1793
Classification: Youth Correctional Officer
California Youth Authority
ACTION: GRANTED

FRANK ALEJANDRO, JR., CASE NO. 02-1465
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILTON ALSANDOR, CASE NO. 02-1524
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

RICHARD AMEZCUA, CASE NO. 02-1522
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

REYNALDO CARDENAS, CASE NO. 02-1463
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JANEEN CLARK, CASE NO. 02-1786
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOELLE DAVI, CASE NO. 01-0703A
Classification: Motor Vehicle Field
Representative
Department of Motor Vehicles
ACTION: DENIED

EDWARD DENMAN, CASE NO. 02-1718
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ARTHUR DIOCSO III, CASE NO. 02-1464
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GARY FOX, CASE NO. 02-1722
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FRANK GRIMES, CASE NO. 00-4277A
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: GRANTED

JOHNNY HERNANDEZ, CASE NO. 02-2493
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANTHONY KELLEY, CASE NO. 02-2531
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHN LOMMEN, CASE NO. 02-2494
Classification: Medical Technical Assistant, CF
Department of Corrections
ACTION: GRANTED

TRACY MASTERSON, CASE NO. 02-1611
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PAUL MCMAHON, CASE NO. 02-0755
Classification: Motor Carrier Specialist I
California Highway Patrol
ACTION: DENIED

SAMANTHA MCNEELY, CASE NO. 00-3854A
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: DENIED

RYAN MILLER, CASE NO. 02-1663
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHNNY MOLER, CASE NO. 02-2496
Classification: Correctional Officer
Department of Corrections

ACTION: DENIED
STEPHANIE SMITH, CASE NO. 01-0847A
Classification: Motor Vehicle Field Representative
Department of Motor Vehicles
ACTION: GRANTED

JACKIE TOUSLEY, CASE NO. 02-2376
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

WILLIAM URICK, CASE NO. 02-2378
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

LOUIS WILLIAMS, CASE NO. 01-0349A
Classification: Motor Vehicle Field
Representative
Department of Motor Vehicles
ACTION: DENIED

15. MEDICAL APPEALS

On February 3, 2003, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

CLINT CHAPMAN, CASE NO. 02-4275
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

LINDSEY COULL, CASE NO. 02-4059
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED

SHANNON RAINWATER, CASE NO. 02-4141
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

OTTO SHELLAND, CASE NO. 02-4263
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

DERRIKE WADKINS, CASE NO. 02-4140
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

16. PETITIONS FOR REHEARING CASES

On February 3, 2003, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

(Petition for Rehearing)

HARVEY HUANG, CASE NO. 01-2565P
Classification: Staff Psychiatrist, CF
Department of Corrections
ACTION: DENIED

17. NON-HEARING CALENDAR

On February 3, 2003, the Board adopted item A. This item was presented by Karen Coffee, Chief, Merit Employment and Technical Resources. California State Personnel Board.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

A. ADMINISTRATIVE LAW JUDGE, UNEMPLOYMENT INSURANCE APPEALS BOARD

The Unemployment Insurance Appeals Board proposes to change the minimum qualifications for the Administrative Law Judge series specification to require travel, conducting hearings and to change the requirement for the II and Presiding level to require membership in any state bar.

18. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) CHIEF, POLICY BRANCH

The Department of Child Support Services proposes to allocate the above position to the CEA category. The Chief, Policy Branch is responsible for making high level policy decisions impacting the State Child Support Program.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
ESTABLISH NEW CEA POSITIONS

- (1) EXECUTIVE OFFICER, EDUCATION AUDITS APPEAL PANEL
The Department of Finance's proposal to allocate
the above position to the CEA category on behalf
of the Education and Audits Appeals Panel has been
approved effective January 13, 2003.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. EXPEDITED HEARINGS - PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 52.4. (Hearing held May 7, 2002).

ACTION: Adopted on February 3, 2002. See page 3.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

2. ANSWER ON APPEALS FILED WITH STATE PERSONNEL BOARD.
PROPOSED AMENDMENT TO STATE PERSONNEL BOARD RULE 63.
(Hearing held May 7, 2002).

NO ACTION

3. Status of the State's Decentralized Testing. (Hearing held July 9, 2002).

NO ACTION

4. MERIT RULE - Proposed adoption of the new Section 250 to the California Code of Regulations (CCR) entitled Requirement that Selection be Based on Merit and Fitness. (Hearing held July 23, 2002).

NO ACTION

5. BRYAN JONES, CASE NO'S 99-3883 & 00-4930. Appeal from dismissal. State Fair Exposition. (Oral argument held October 8, 2002).

ACTION: On February 3, 2003, adopted Board decision sustaining dismissal.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

6. MERIT SELECTION MANUAL. (Hearing held November 6, 2002).

ACTION: On February 3, 2003, Board adopted Rule 50 that includes language adopting the Merit Selection Manual.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

7. PATRICIA SABATO-JONES, CASE NO. 01-3789. Appeal from dismissal. Unemployment Insurance Board. (Oral argument held November 6, 2002).

ACTION: On February 3, 2003, adopted Board decision modifying dismissal to suspension for 90 calendar days.
VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

8. TEACHER STATE HOSPITAL(SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

9. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

10. LEONARD GRILL, CASE NO. 02-1166. Appeal from ten percent reduction in salary for nine pay periods. Department of Forestry and Fire Protection. (Oral argument held December 3, 2002).

NO ACTION

11. RUFUS LINDSEY, CASE NO. 01-3651. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

NO ACTION

12. VICTORIA MCCOY, CASE NO. 01-3372. Appeal from dismissal. Department of Corrections. (Oral argument held December 4, 2002).

NO ACTION

13. DAVID NUNEZ, CASE NO. 98-3145. Appeal from five percent reduction in salary for six months. Department of Corrections. (Oral argument held December 4, 2002).

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ACTION: On February 3, 2003, adopted Board decision modifying 5% reduction in salary for 6 months to official reprimand.

VOTE: Elkins, Alvarado, Harrigan - Aye.

14. EEO REGULATIONS

Proposed revisions to state and local agency merit systems equal employment opportunity regulations. (Hearing held January 7, 2003).

ACTION: Adopted on February 3, 2003.

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.

15. LAYOFF RULES

Proposed amendments and adoption of regulations relating to layoff: Title 2, California Code of Regulations (2CCR), §§ 470, 470.1, 471, 471.1 and 472, Local Agency Personnel Standards §§ 17502 and 17520. (Hearing held January 7, 2003).

NO ACTION

16. KIM HONG, CASE NO. 01-3587P. Appeal from transfer. Department of Corrections. (Oral argument held January 7, 2003).

ACTION: On February 3, 2002, adopted Board decision dismissing appeal from transfer.

VOTE: Elkins, Alvarado, Harrigan - Aye.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

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I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on February 3, 2003.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Elkins, Alvarado, Harrigan, Tom - Aye.